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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,199	08/22/2003	Timothy J. Hinchey	9519.18207	9030
26308	7590	07/14/2005	EXAMINER	
RYAN KROMHOLZ & MANION, S.C. POST OFFICE BOX 26618 MILWAUKEE, WI 53226			ELKINS, GARY E	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/646,199

Applicant(s)

HINCHEY ET AL.

Examiner

Gary E. Elkins

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 34 and 36-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 and 35 is/are rejected.
- 7) ☒ Claim(s) 28-33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20030823.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1-33 and 35 in the reply filed on 22 April 2005 is acknowledged. Claims 34 and 36-41 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by either Smith or Varano et al. Each of Smith and Varano disclose a single piece beverage container, i.e. a container formed into a single integral piece from multiple pieces and including two walls (13, 14; 12, 13, respectively) insofar as claimed.

4. Claims 1, 3, 5 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Schneider. Schneider discloses a single piece two walled container including a wing 11 and means 9 coupling the wing to the container.

5. Claims 1-5, 9, 24 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Florian. Florian discloses a container including two walls, i.e. a semi-circular wall connected to another semi-circular wall, a rim 10, 13 and wings 14 hingedly coupled to the rim insofar as claimed.

Art Unit: 3727

6. Claims 3-6, 9, 15, 24 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Skowronski. Skowronski discloses a container including wings 32, 35, 40 hinged to rims 11 formed by scored lines in the top edge of the container. Wing sections 35, 40 are adhesively connected in the container.

7. Claims 3-6, 13, 14 and 24-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Neumann. Neumann discloses a container including wings 16, 18 hinged to rims formed by folds 17 in the top edge of the container. Wing sections 18 are interlocked as claimed.

8. Claim 35 is rejected under 35 U.S.C. 102(b) as being anticipated by Stropkay. No distinction is seen between the structure of the container claimed and the structure of the container of Stropkay as a result of the intended step of manufacture as set forth in claim 35, i.e. the container of Stropkay is capable of being formed by thermoforming, stamping and then thermoforming. The patentability of a product is not dependent upon the process intended to be used to manufacture it. See MPEP 2113.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Florian or Schneider, each in view of Witkowski. Each of Florian and Schneider discloses all structure of the claimed container except formation of the container from polyethylene (cl. 10), formation of one of the wing and container from a transparent material (cl. 11) or formation of

Art Unit: 3727

both the wing and container from a transparent material (cl. 12). Witkowski teaches that it is known to make a thermoformed cup from transparent polyethylene. It would have been obvious to make the cup in either Florian or Schneider from transparent PE as taught by Witkowski to allow one to see the contents from the side and since PE is inexpensive and widely available in the marketplace.

11. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider in view of Edwards. Schneider discloses all structure of the claimed container except ribbing formed on the lower portion of the sidewall. Edwards teaches that it is known to make the lower portion of a cup sidewall with ribbing. It would have been obvious to make the lower sidewall of the cup in Schneider with ribbing as taught by Edwards to reinforce the lower portion of the container.

12. Claim 16-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider in view of Stropkay. Schneider discloses all structure of the claimed container except a surface pattern on the outside of the container. Stropkay teaches that it is known to make the sidewall of a container with a surface pattern to trap air between an outer layer and the sidewall of the container to reduce the amount of heat reaching the hand of the user. It would have been obvious to make the wing and sidewall in Schneider with a surface pattern as taught by Stropkay to trap air between the wing and sidewall and further insulate the sidewall.

Allowable Subject Matter

13. Claims 28-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

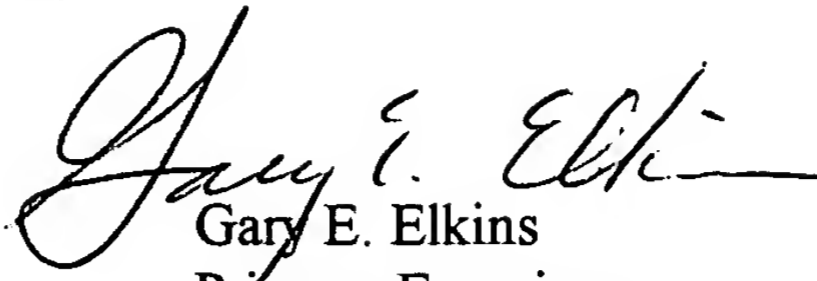
Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.

Application/Control Number: 10/646,199

Page 6

Art Unit: 3727


Gary E. Elkins
Primary Examiner
Art Unit 3727

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11 July 2005